IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 3478 OF 2007

1. Kishor Ramphal Gudaria.
2. Sumeet Bhagatsingh Valmiki. ... Applicants.

V/s.

The State of Maharashtra. ... Respondent.

Naveen Chomal for the applicants.

S.S.Pednekar, A.P.P. for the State.

CORAM: V.C.DAGA, J.

DATED: 1st November 2007.

P.C.:

. Heard learned counsel for the applicants and learned A.P.P. for the State.

2. By this application under section 439 of Code of Criminal Procedure, 1973 (Cr.P.C.), the applicants are seeking bail in connection with C.R.No.I-619/2006 registered with Mulund Police Station, Mumbai for the offences punishable under sections 395, 342 of Indian Penal Code.

3. The prosecution case is that one complaint was lodged by one Deelip Jagjivandas Yogi on 26th

December, 2006 (afternoon), when he was in his cabin, which is above his workshop, along with one associate Sari Dinesh and one employee Smt.Daksha Rane. At that time they had some cash in their hands. Five unknown robbers, who were having revolvers in their hands, barged in and robbed them of cash worth Rs.2,05,000/- and mobile phones worth Rs.12,000/-. Thereafter they tied them and ran away. In the F.I.R. the complainant has given detailed description of the robbers. The police could not trace any culprit. However, on 16th June, 2007, the present applicants along with others were arrested and, thereafter, T.I.Parade, in the Thane Central Prison, was conducted; wherein the present applicants appears to have been identified. The learned counsel for the applicants submits that in the case of one of the co-accused, viz., Satish, he was not identified during the course of T.I.Parade. Learned counsel for the applicants took me through the T.I.Parade Panchanama and brought to my notice that glaring defects crept in the Panchanama. The T.I.Parade was not conducted as per the procedure laid down in Cr.P.C. So far as first witness is concerned, when he was asked to identify the accused persons, all five accused persons were included in the T.I.Parade, whereas; when the second witness was asked to identify only four accused persons were made to stand. The name of "Satish" is missing from the said Panchanama. Learned counsel for

the applicant, thus, submits that T.I.Parade was defective and no conclusion can be drawn on the basis of such T.I.Parade.

4. The learned A.P.P., appearing for the State, opposed this application for bail contending that the present applicants are identified in the T.I.Parade. He, thus, submits that application for bail be rejected.

5. Having heard both parties, the evidence of T.I.Parade is not a substantive evidence. On being asked as to what the substantive material available on record against the present applicants, learned A.P.P. submits that there is no other evidence other than T.I.Parade. The T.I.Parade conducted, prima facie; does not stand to the scrutiny of law. The applicants would, therefore, be entitled to bail. In these circumstances of the case, I am inclined to grant bail in favour of the applicants, subject to the following conditions:

(a) The applicants, arrested in connection with C.R.No.619/2006 registered with Mulund Police Station, Mumbai shall be enlarged on

bail in the sum of Rs.15,000/- each with one or two local sureties to make up the said amount.

(b) The applicants shall report to the concerned Police Station once in a week, i.e. on every Monday between 3.00 to 5.00 p.m. till conclusion of the trial. He shall co-operate with the investigating agency for disposal of the case.

(c) The order of bail will be given effect only after the applicants furnish to the investigating officer the details about their places of residence and addresses where they propose to stay after he is enlarged on bail. The applicants will not change their residential addresses thereafter till the conclusion of trial without prior intimation to the investigating officer.

(d) The applicants shall not directly or indirectly, make any inducement or threat or pressurise any prosecution witnesses and shall not in any manner tamper with the prosecution

evidence.

(e) It is needless to mention that breach of any of the conditions by the applicants shall result in cancellation of bail.

(f) Any observation made in this order shall not be construed as finding or expression on merits of the case at the time of trial.

6. Application stands disposed of accordingly.

JUDGE